**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**BENCH AT JAIPUR.**
**--------**

**J U D G M E N T**

Murli Manohar vs. Nisar Ahmed & Anr.

S.B.Civil First Appeal No.66/1988 under Section 96 C.P.C. against the judgment and decree dated 22.12.1987 passed by Shri Ashok Kapoor RHJS, Additional District Judge,Bundi in Civil Suit No.15/1985 dismissing the suit of the appellant on preliminary issue.

Date of Judgment :::::: August 25, 2006

**PRESENT**

**HON'BLE MR.JUSTICE KHEM CHAND SHARMA**

Mr.S.R.Joshi for the appellant.
Mr.S.K.Jain for the respondents.

**BY THE COURT:-**

The facts giving rise to this appeal in brief are that the plaintiff appellant filed a suit against the defendant respondents for recovery of Rs.10,240/-. It was inter alia pleaded in the plaint that on 10.8.1981 a loan of Rs.7,000/- was advanced to the defendants by executing a pronote, @ of 2% interest per month. It was mentioned

that the defendants made payment of Rs.1800/- from time to time towards interest. Hence, the suit was filed for recovery of Rs.10,240/- (Rs.7,000/- as principal and Rs.3240/- as interest).

2. In the written statement, the defendant respondent denied the fact of taking loan of Rs.7,000/- on 10.8.1981. But has taken a loan of Rs.5,000/- from the plaintiff and his father, who are jointly engaged in the business of money lending. It was mentioned that at the time of advancing loan the father of the plaintiff obtained signatures on a printed form after pasting some stamps. It was also the case of the defendant that he made payment of Rs.1800/- towards the principal amount in three installments of Rs.600/- each which were wrongly deposited towards interest. It was also mentioned that the suit was time barred. In additional pleas it was mentioned that the plaintiff was engaged in the business of money lending but was having no licence for this purpose and, therefore, the suit was liable to be dismissed. In the event of decree, installments were prayed for on the ground that he is earning his livelihood by doing stitching work at Foothpath.

3. On the basis of the pleadings of the parties, the

learned trial court framed nine issues and recorded evidence of the parties. Plaintiff Murli Manohar examined himself as PW.1 and also examined PW.2 Abdul Rashid. From the side of the defendants, both the defendants examined as DW.1 and DW.2.

4. On the basis of the arguments raised on behalf of the parties, the trial court first of all proceeded to decide issue No.7 which was to the effect as to `whether the suit is barred by the provisions of the Rajasthan Money Lenders Act, 1963 ? (for brevity `the Act'). On the basis of the evidence of the parties and having gone through the relevant provisions of the Act, the learned trial court decided issue No.7 against the plaintiff and in favour of the defendants holding that the plaintiff being money lender had no money lending licence on the date of advancing money as loan to the defendant and also did not maintain accounts and, thus, violated the provisions of Sections 22 and 23 of the Act. Holding this, the learned trial court vide judgment and decree dated 22.12.1987 dismissed the suit of the plaintiff on the ground of maintainability. Hence, this appeal.

5. Learned counsel for the appellant seeks to challenge the impugned judgment on the following grounds:-

(1) that the trial court has failed to consider this aspect of the case that it was the loan advanced to a `trader' therefore, it was not a `loan' under the provisions of the Act and as such the provisions of the Act are not at all applicable

(2) that the loan was advanced to the defendant for the purchase of truck (motor finance). Therefore, it was a commercial transaction and thus, the provisions of the Act are not at all applicable; and

(3) that the learned trial court has neither properly appreciated nor critically examined the evidence of the plaintiff while deciding issue No.7.

6. Sofar as the argument No.(1) and (2) are concerned suffice it to observe that in the plaint the plaintiff has not pleaded such facts but in the statement he has stated that the loan was taken for purchase of truck.

7. Before dealing the evidence adduced by the respective parties, it will be useful to consider the relevant provisions of the Act.

8. Word ***`loan'*** has been defined in sub-section (9) of Section 2 of the Act, which means an advance at interest,

whether of money or in kind, but does not include-

(a) a deposit of money or other property in a Government Post Officer Savings Bank or in any other bank or in a company or with a co-operative society;

(b) a loan to or by, or a deposit with, any society or association registered or deemed to be registered under the Rajasthan Societies Registration Act, 1958 or any other enactment, relating to a public, religious or charitable object;

(c) a loan advanced by Government or by any local authority authorised by Government;

(d) a loan advanced to a Government servant from a fund established for the welfare and assistance of Government servants and which is sanctioned by the State Government;

(e) a loan advanced by a co-operative society;

(f) an advance made to a subscriber to, or a depositor in, a Provident Fund from the amount standing to his credit in the fund in accordance with the rules of the fund;

(g) a loan to or by an insurance company as defined in the Insurance Act, 1938;

(h) a loan to or by a bank:

(i) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 other than a promissory note;
(j) except for the purpose of section 27 and 29;

(i) a loan to a trader, or
(ii) a loan to a money-lender who holds a valid licence.

9. According to sub-section (16) of Section 2 of the Act the word `***trader***' means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and includes-

(a) a whole-sale or retail merchant,

(b) a commission agent,

(c) a broker,

(d) a manufacturer,

(e) a contractor, and

(f) a factory owner,

but does not include an artisan or a person who sells his agricultural produce or cattle or buys agricultural produce or cattle for his use.

*Explanation:*-For the purposes of clause (16) an `*artisan*' means a person who does not employ more than ten workers in a manufacturing process on any one day of the twelve months immediately preceding.

10. Section 10 of the Act says that a licence shall be valid for a period of three years from the date of its issue. A money-lender is required to apply for renewal of such a licence under sub-section (6) of Section 6 of the Act before two months before expiration of the term thereof.

11. Section 11 empowers the court to dismiss a suit, to which this Act applies, for recovery of money filed by a money-lender when it is satisfied that at the time when the loan or any part thereof was advanced, the money-lender did

not possess a valid licence. Sub-section (1) of Section 11 of the Act directs the Court not to go into the merits of the claim put by the money-lender. However, the following points required satisfaction of the court:-

(a) the provisions of the Act apply to the suit;

(b) at the time when the loan was advanced, the money-lender did not possess a valid licence.

12. Section 22 of the Act casts a duty on the money-lender to keep accounts in such form and in such manner as may be prescribed and furnish copies thereof in the prescribed manner to the debtor within three months from the date on which the loan is made. Section 23 of the Act requires the money-lender to deliver or cause to be delivered every year to each of his debtors a legible statement of such debtor's account signed by the money-lender or his agent of any amount that may be outstanding against such debtor showing the details as mentioned in this Section.

13. Section 26 of the Act prescribes procedure of the court in suits regarding loans, which reads thus:-

**"26.Procedure of court in suits regarding loans.-** Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act apples-

(a) a court shall, before deciding the claim on merits, frame and decide the issue whether the money-lender has complied with the provisions of section 22 and 23;

(b) if the court finds that the provisions of section 22 and section 23 have not been complied with by the money-lender in respect of the whole or any part of the claim, it shall dismiss-

i. the whole suit with costs where such contravention has been in respect of the entire claim in the suit; or

ii. so much of the claim with costs proportionate thereto in respect of which the said provisions have not been complied with by the money-lender.

14. After hearing learned counsel for the appellant I have gone through the evidence of the parties in the light of the above quoted provisions of the Act.

15. PW.1 Murli Manohar in his examination in chief has stated that he is having a money-lending licence, which has been produced as Ex.3. In his cross-examination this witness has deposed that Rs.1800/- received by him towards interest were not accounted for any where. He had advanced money to 10-15 persons. He does not remember as to how much loan was advanced to the debtors. He cannot remember how much amount he had received from the debtors. Except promissory note, he does not maintain any cash book. He does not keep carbon copy of the receipt and so also the counter file. Receipt book is not printed. The witness deposed further that Nisar Ahmed took the amount for purchasing a truck but he cannot say that which and from whom he purchased truck. Nisar Ahmed purchased truck with another person but he does not know the name of another

person. He has deposed further that earlier he was keeping accounts regarding loan amounts but presently he is not keeping accounts. He stopped keeping accounts before filing the suit. He did not maintain accounts after giving loan to the defendant. He got the licence renewed in 1985 whereas the licence was valid up to March 1981. The witness has accepted the suggestion that the licence was not effective between the period March 1981 to March 1985. Regarding the job of the defendant, the witness has deposed that Nisar used to sit at the shop of Prem Chand Kothari with his sewing machine and is not having his own shop. PW.2 Abdul Rashid in his cross-examination has accepted this fact that the plaintiff was engaged in the business of money-lending.

16. In his statement defendant Nisar Ahmed (D.W.1) has admitted that he took loan of Rs.5,000/- from the plaintiff and the same was to be repaid in 10 installments of Rs.6,00/- each. He paid Rs.1800/- to Ram Charan which were towards the principal sum and not against the interest and Ram Charan did not give him any receipt. At the time of fourth installment he demanded receipt of the earlier installments but he refused to give the same therefore, he did not make payment of the fourth installment and also the remaining installments. Regarding his job, the witness has stated that he used to sit with the sewing machine on the Foot-path. He has stated further that he took the loan for

his personal use and the loan was not taken for purchasing truck as he has not done such business till date.

17. From the evidence of the parties the following facts which emerge out may be enumerated below:

1) that the plaintiff was engaged in the business of money lending and was a `money-lender' therefore, the provisions of the Act are fully applicable;

2) that the plaintiff was having a money-lender's licence but the date on which loan was advanced to the defendant, the licence was not renewed and the same was got renewed in the year 1985;

3) that at the relevant time, the plaintiff neither maintained the accounts nor furnished copies thereof as required by Section 22 of the Act to the defendant;

4) that the plaintiff did not deliver the statement of accounts and copies thereof to the defendant as required under Section 23 of the Act;

5) that as the plaintiff has failed to comply with the provisions of Sections 22 and 23 of the Act, the suit was liable to be dismissed under Section 26 of the Act;

6) that the defendant was not a `trader' as defined under the Act but was an artisan as he was doing

cloth stitching work by sitting with him sewing machine on the Footh-path.

18. In this view of the matter, I am of the firm opinion that the learned trial court has committed no error in recording finding on issue No.1 against the plaintiff and in dismissing the suit of the plaintiff in the light of the provisions of Section 26 of the Act.

19. For the discussions above, the first appeal fails and is hereby dismissed with no orders as to cost.

**(K.C.Sharma),J.**

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